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ABSTRACT

This paper is designed to provide information to librarians in school and public libraries on their legal responsibilities toward video and copyright. The first section discusses the need for preparation of a district-wide copyright policy by teachers, media specialists, and administrators, and provides six suggested ingredients for inclusion in such a policy. Fair use guidelines are explained, as well as situations in which exemption from "home use only" limitations are legal. The second section discusses possible public library concerns regarding the copyright law, with emphasis on the discrepancy between categories of "home use only" and "public performance" videotapes. Three indicators are provided that can be used to determine the category in which a tape belongs, and ways of maintaining good relationships with local area theaters and video rental stores are suggested. Finally, five ways in which librarians and their institutions can keep up with new developments in copyright and video are presented. A 10-item list of references is included. (JB)

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Video & Copyright

Technologically, access to the world of video is incredibly easy. At the touch of a "play" or "record" button, a program can be recorded, copied, or broadcast to a living room, a classroom, or a whole school building or district. A satellite dish can receive programming from anywhere in the world.

Legally, access to the world of video seems to be complicated and arbitrary. However, knowledge of those legalities and responsibilities are absolutely essential for any librarian involved in any way with the circulation, acquisition, operation, or supervision of video tapes or videotape equipment.

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IN SCHOOLS AND COLLEGES

In schools, a kind of educational rationale was used for years in good faith, but in ignorance and in violation of copyright restrictions. There was a great deal of copying from one format to another and off-air taping with the best intentions of providing efficient service to aid instruction in a cost effective way. Continuing in these old ways not only violates the spirit of the copyright law, but leaves abusers wide open to liability.

Should a copyright case develop, the school district, as well as the teacher and librarian all the way up to a superintendent, could be held liable depending on the degree of involvement of each of these individuals. For each separate infringement act, statutory damage could range from $250 to $10,000.

To provide the best protection against such copyright problems in video, it is recommended that a district-wide copyright policy be prepared by teachers, media specialists, and administrators to be officially approved and adopted by the highest authority in the district. Ivan Bender, a nationally known copyright attorney, advises that several ingredients be included in such a policy:

1. An introduction naming the entity making the policy, explaining the need for such a policy, and a statement stressing that violation will not be tolerated.

2. A statement on the rights of copyright holders and an explanation of fair use. (These can be found verbatim in the copyright law itself, sections 106 and 107.)

3. Various guidelines have been developed. Fair use guidelines for off-air videotaping are available from the Television Licensing Center or from ALA, or AECT.

4. A statement regarding the need for licensing materials not covered under the fair use guidelines or originally purchased with the material.

5. An explanation for the need to license or secure authorization to use copyrighted works or portions of them in publications or productions prepared by the school or district.

6. A sample letter requesting permission to reproduce copyrighted materials from the owners of the copyright.

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Finally, both an initial and a continuous effort to educate teachers and other district workers must be made concerning both this policy and new copyright law developments.

*Fair use guidelines for off-air videotaping include provisions for non-profit educational institutions to tape off the air programs only at the specific request and use of individual teachers. They may be used once for instruction and once for reinforcement during the first ten days after recording, and may be retained up to 45 days after recording for teacher evaluation purposes. Unless a license to retain the material has been authorized or purchased from the copyright holder, the material must be erased after the 45 days have expired.

To acquire permission to retain such materials recorded off-air, rights may be purchased individually from the copyright holder or from a licensing agency such as the Television Licensing Center (TLC). TLC's current licensing rates are $50/one hour program/year, or $125/hour/life of the tape.

A great many videotapes, especially of motion pictures, are sold or rented for "home use only", rather than "public performance". Exemption from this "home use only" limitation is legal when:

1. a face-to-face teaching situation must exist when the videotape is shown;

2. the showing must take place during regular teaching hours;

3. the showing must take place in a classroom or other environment devoted to instruction.

It should be noted that, in the case of #1 above, the library is not a place to view a videotape unless the teacher is present and teaching. After school movie fund raisers are also ruled out under provision #2 above.

Because authorities at this time disagree as to the legality of a teacher taping a program at home for use at school, it is recommended that taping off-air for later instruction be done only at school. Because it is not clearly legal, it is also recommended that home use rental tapes not be used in school.

*Legalities of the off-air taping guidelines may not be concrete. A court decision in the last two years contained an opinion that the guidelines do not apply when a program is available elsewhere in the marketplace at the time of broadcast. For complete protection, one of the companies involved in the suit advises educators to: pay attention to the copyright notice displayed in the work: secure authorization to copy before the broadcast; and investigate duplicating licensing agreements.[1] When in doubt, ask the copyright holder.

[1]Learning Corporation of America, p. 156.

IN PUBLIC LIBRARIES

Public library concerns in the area of videotapes and copyrights depend on the library's use of the tapes--for performance or viewing in the library or other public forum, or for circulation for home use.

We have noted that videotapes intended for home use may sometimes be used for public performance if face-to-face teaching takes place. However, "Seldom, if ever, could a performance in a public library qualify under all the conditions imposed by this. . . section (of the law)."[2] In fact, even nursing homes and other institutions may not use such "home-use" tapes other than in the resident's individual sleeping room.

Whether rented or purchased, such "home-use only" videotapes are not legal for public performance. Therefore, if you wish to show videotapes in your public library, you must purchase those intended for public performance or in the public domain. It is not always readily apparent into which category (public performance or home-use only) a videotape fits. There are, however, several good indicators that you may look for.

1. Price - generally, a movie-length tape selling for $20-$90 is for home-use only.

2. Available in 16mm format - almost any tape with prices quoted for both 16mm and video can be used for public performance as well as home use.

3. Producer's purchase agreement as stated - usually in the back or front of their catalog. Read this carefully! In a catalog from Librarian's Video Service, purchasing libraries are cautioned of their responsibility "for adhering to the 'disclaimers' printed on most video cassettes" (i.e., home-use only). Conversely, a Weston Woods catalog clearly states that their videos are for both "public performance. . . and for library circulating collections to homes and institutions".

Please note, however, that "public performance" does not necessarily include "theatrical performance" rights involving admission charges and fund raising. These must usually be negotiated separately.

In the interest of maintaining good relationships with local area theaters and to avoid duplication of services within your community, it might be advisable to restrict your public performance video offerings to those which would not likely be offered in area theaters.

Circulation of home-use videotapes to your library patrons may also concern local businesses--not only theaters but local video rental stores and other outlets. In at least one public library's experience, however, library loan of videos has generated, not lessened, video store business.[3]

If you feel that duplication of services with local merchants is not an issue, you should still plan for copyright considerations in the loan of home-use videotapes and VCRs. If a patron were to use illegally a tape secured from the library, the librarian and the institution might also be subject to suit.

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[2] TLC Guide, September, 1985, p. 8.

[3] Wilson Library Bulletin, June, 1985, p. 666.

Therefore, it is advised that librarians prepare a release form to be signed by the patron borrowing videotape or equipment affirming that he intends home showings only, that the tape will not be duplicated, and that the library is not liable for copyright violations. Just as on photocopiers, it might also be advisable to affix a copyright warning to videotape recorders:

> "The copyright law of the United States (Title 17 U.S. CODE) governs the making of photocopies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement."[4]

Satellite television reception and/or off-air taping has additional limitations, although the legalities regarding this issue are in a state of development at this time. An individual can now receive, for private viewing, unscrambled television pictures via satellite without violation of copyright. This is for private use only--not for public performance. In addition, although copyright law describes an exemption for face-to-face teaching as noted above, this does not apply to satellite reception. Pirating of scrambled satellite programming through use of infamous "black boxes" without legal licensing or fee payment is a criminal offense. In summation, therefore, consider very carefully all these legal issues of copyright before requesting the purchase of satellite hardware for your institution.

To help you and your institution keep current on the issue of copyright and video, you might want to:

- Join the Television Licensing Center and get a free subscription to the TLC Guide, which gives extensive information about off-air taping opportunities and copyright developments, as well as a toll-free reference service for answering copyright questions. The number is (800)-323-4222.

- Preview the ten-minute slide/tape show available free to TLC members that explains TLC and aspects of copyright and off-air taping. Contact TLC Guide managing editor Brenda Coto.

- TLC provides an off-air videotaping policy poster and fair use guidelines statement free on request.

- Check the recent #53 U*N*A*B*A*S*H*E*D Librarian for an excellent (uncopyrighted) article on schools and the fair use of copyrighted material, including print, music, video, and microcomputer software. Also available for $1 from the Publications Department, Texas Education Agency, 1701 North Congress, Austin, TX 78701.

- Update your copy of a publication distributed at Wyoming copyright workshops with update #3 of the Copyright Game Resource Guide by Gary Becker. This addition covers developments in videotapes and micro software. Available from the Wyoming State Library Continuing Education office.

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[4]Four Rivers Area Library Services Authority Newsletter, October, 1985, p. 5.

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